

IN THE HIGH COURT OF DELHI

Crl.M.C. No.1689/2004

Raju @ Raj Kumar Petitioner
! through: Mr.S.S.Sangwan, Advocate

VERSUS

\$ State & Ors. Respondent
^ through : Mr.Pawan Sharma, Advocate

Crl.M.C. No.3358/2005

Rohit Kumar Petitioner
! through: Mr.Manoj K.Singh, Advocate

VERSUS

\$ State & Ors. Respondent
^ through : Mr.Pawan Sharma, Advocate

Crl.M.C. No.4040/2005

Ramesh Kumar Petitioner
! through: Mr.S.S.Sangwan, Advocate

VERSUS

\$ State of Delhi & Ors. Respondent
^ through : Mr.Pawan Sharma, Advocate

% DATE OF DECISION: 26.09.2007

CORAM:

* **Hon'ble Mr.Justice Pradeep Nandrajog**

1. Whether reporters of local papers may be allowed to see the judgment? Y
2. To be referred to the Reporter or not? Y
3. Whether judgment should be reported in Digest? Y

: **PRADEEP NANDRAJOG, J.** (ORAL)

1. Raju, Ramesh and Rohit pray to this court by and under the above captioned petitions to quash FIR No.1039/2003 dated 18.11.2003 under Sections 323/328/342/363/376/506/34 IPC, PS: Uttam Nagar.

2. As per afore-noted FIR lodged pursuant to the statement made by the prosecutrix, Kumari S.M., she stated that she was aged 17 years and 6 months and was residing with her parents at D-29, East Uttam Nagar, Delhi and was a student of Class XI of Holy Public School. That on 19.10.2003 an FIR No.954/2003 under Section 363/366/34 IPC was registered at P.S. Uttam Nagar and on 31.10.2003 after making statement in court, accompanied by her parents, she came to her house. That on 9.11.2003, she appeared for a test at Central School, Tagore Garden and was returning back in the company of her mother. They had hired a rickshaw. When the rickshaw reached near Tillu Bridge, Ramesh came and told her mother that he wanted to speak to her i.e. Kumari S.M. That Ramesh was accompanied by Rohit and both took her away and made her inhale something which made her unconscious. When she regained consciousness, she found herself in a room where Ramesh and Attar Singh, father of Ramesh were present. That she was confined for several days and was raped. She named besides Ramesh, Pawan Malik, Raju, Sonu and one Sadhu as accused persons.

3. Before noting the submissions made by learned counsel for the petitioners, certain facts and events, pre and post registration of FIR would be relevant and are being noted.

4. On 19.10.2003 an FIR No.954/2003 was registered on the complaint lodged to the local police by Pawan Kumar, father of Kumari S.M. He stated in his complaint that his daughter had left the house on 17.10.2003 and had not returned. He stated that prior thereto, his daughter had left the house on 3.10.2003 and on being pressurized had returned back on 6.10.2003. That Pawan Malik, Ramesh, Raju, Rohit and Sadhu were responsible for pressurizing her daughter. He stated that Ramesh wanted to forcibly marry his daughter. He further stated that Pawan Malik and his friends used to threaten him.

5. After FIR No.954/2003 was recorded, Kumari S.M. moved an application in the court of the Metropolitan Magistrate requesting that her statement under Section 164 Cr.P.C. be recorded. It may be noted that the application in question was not routed through the local police. Statement of Kumari S.M. was recorded under Section 164 Cr.P.C. She disclosed to the learned Magistrate that none of the persons named as accused by her father had committed any offence. In other words, statement of Kumari S.M. recorded under Section 164 Cr.P.C. was exculpatory of the persons named as accused in FIR No.954/2003.

6. The result was that on 5.11.2003, Rohit was granted

anticipatory bail in FIR No.954/2003.

7. On 13.11.2003 father of Kumari S.M. filed an application in the court of learned Metropolitan Magistrate, Delhi praying that directions be issued to the I.O. to record the statement of Kumari S.M.. With reference to said application dated 13.11.2003 SI. Rajveer Singh the IO filed a response that Kumari S.M. was in the habit of leaving her house and returning back.

8. An undated letter was submitted at the local police station by Kumari S.M. informing that her father had an evil eye on her and that the police should take action against her father.

9. After FIR No.1039/2003 was lodged by Kumari S.M. on 18.11.2003, she filed a complaint under Section 387/500 IPC on 28.1.2004. She levelled serious allegations against her father. She stated that her father had lodged a false FIR i.e. FIR No.954/2003. She further stated that her father put her under fear of death and forced her to lodge a false complaint i.e. FIR No.1039/2003.

10. The three captioned petitions came to be filed in this court praying that the afore-noted events cast a serious doubt on the veracity of the statement made by Kumari S.M. pursuant where to FIR No.1039/2003 has been registered. Prayer made is to quash the said FIR.

11. Crl.M.C.1689/2004 was the first petition to be filed by

Raju. It was listed on 31.5.2004. Kumari S.M. appeared on the very first date and made a statement that the FIR in question was recorded at the behest of her father.

12. Thereafter, Crl.M.C.1689/2004 was listed on various dates. Same continued to remain pending in this court when Crl.M.C.3358/2005 and Crl.M.C. No.4040/2005 were filed.

13. It is urged by counsel for the petitioners that FIR No.1039/2003 needs to be quashed, inter alia, for the following reasons :-

- (a) Complainant, Kumari S.M., has categorically stated in this court as recorded in the order dated 31.5.2004 in Crl.M.C.No.1689/2004 that the complaint in question was recorded at the behest of her father and her statement therein is not correct.
- (b) FIR No.954/2003 was lodged by the father of Kumari S.M. out of vengeance and falsity therein was exposed by Kumari S.M. when her statement under Section 164 Cr.P.C. was recorded by the learned Metropolitan Magistrate.
- (c) Application filed on 13.11.2003 by father of Kumari S.M. before the learned Metropolitan Magistrate pertaining to FIR No.954/2003 resulted in I.O. informing the learned Metropolitan Magistrate that Kumari S.M. was in the habit of leaving her house

without the consent of her parents and returning as per her own freewill. Thus, that Kumari S.M. was in the habit of loitering around and just about stating whatever she felt like and was compelled by her father to act against her wishes.

(d) That application submitted to the local police by Kumari S.M. that her father was having an evil eye on her and, therefore, she was compelled to leave the house coupled with the complaint dated 28.1.2004 under Section 387/500 IPC filed by Kumari S.M. against her father evidences that her father was pressurizing her to falsely depose against the persons accused in FIR No.1039/2003.

(e) That inherent falsity in FIR No.1039/2003 was evident on the face of the FIR. It was unbelievable that Kumar S.M. could be kidnapped when she was in the company of her mother in the manner it has been recorded in the FIR. Further, the time lag between the date of the alleged incident i.e. 9.11.2003 and the date of registration of FIR i.e. 18.11.2003 was fatal.

14. Learned counsels for the petitioners rely upon a decision of a learned Single Judge of this Court reported as 2000 CrI.LJ 4307, V.K.Tulsian Vs. State to urge that notwithstanding Section 376 Cr.P.C. being attracted if no case is made out, the FIR

can be quashed.

15. Per contra, Sh. Pawan Sharma, learned counsel for the state submitted that no doubt conduct of Kumari S.M. seems to be weird, but cautioned that it could well be a case where Kumari S.M. under extreme threat is being manipulated by the accused persons.

16. Learned counsel for the State points out that strangely enough, after filing the criminal complaint against her father on 28.1.2004, Kumari S.M. has not even bothered to prosecute the complaint. Counsel further urges that attendance by Kumari S.M. in court on 31.5.2004 i.e. the very first date on which CrI.M.C.No.1689/2004 was listed casts a suspicion that she was under the clutches of Raju and at his behest appeared in the court. Counsel submits that whereabouts of Kumari S.M. are unknown even to her parents. She may well have been confined against her wishes or is being manipulated against her wishes. Lastly, counsel urged that act of Kumari S.M. in filing an application before the learned Metropolitan Magistrate in FIR No.954/2003 for recording her statement under Section 164 Cr.P.C. was not to be expected of a young girl of her age. That pursuant to her application, her appearance before the learned Metropolitan Magistrate and recording a statement under Section 164 Cr.P.C. which is exculpatory of the accused persons is again a suspicious circumstance requiring further probe to be

made.

17. In a nutshell, learned counsel for the state submitted that it was not a fit case for this court to exercise its inherent powers under Section 482 Cr.P.C. to quash the complaint.

18. Having considered the rival submissions and having noted the salient features and facts pertaining to registration of FIR No.954/2003 and FIR No.1039/2003, it is but apparent that either one of the two possibilities can exist :-

- (i) That Kumari S.M. was being manipulated by her father, Pawan Kumar and indeed was compelled to lodge a false FIR i.e. FIR No.1039/2003.
- (ii) That Kumari S.M., who was aged 17 years and 6 months when FIR No.954/2003 was recorded, was under an extreme threat, compulsion and coercion and was thus not in a fit state of mind or was being compelled to state what she was stating at the behest of the petitioners.

19. Who is pressurizing her? The answer cannot be given save and except after recording evidence.

20. One thing stands out. The same is that Kumari S.M. has not prosecuted the complaint which she has filed against her father.

21. Under the circumstances it would not be appropriate for this court to exercise its powers under Section 482 Cr.P.C. to

quash the FIR in question.

22. The petitions are dismissed.

23. But noting that issue is vexed and not free from doubt, I direct that since charge-sheet has been filed in the afore-noted FIR, on petitioners furnishing person bond in the sum of Rs.20,000/- each with one surety each in the like amount to the satisfaction of learned Trial Judge they shall be admitted to bail by the learned Judge.

24. The usual mantra. Nothing stated in the present order would be construed as an expression on the merits of the controversy. Needless to state, learned Trial Judge would decide the issue after recording the evidence and in accordance with law.

25. No costs.

September 26, 2007
pu

PRADEEP NANDRAJOG, J.